IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-594

AMERADA HESS CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Reply to Respondent's Opposition to Petition for a Writ of Certiorari

Respondent's brief addresses a question not even raised by the petition for certiorari. Respondent asserts (p. 9) that the petition is

> "based on a single newspaper article that appeared on an inside page of a local newspaper after the close of the evidence but before the jury received its instructions"

as if to suggest that this is just another case raising again the issue whether newspaper publicity before or during the trial is sufficiently prejudicial to deprive a defendant of a fair trial.

Respondent has simply ignored the thrust of this petition. What distinguishes this case is the fact that the prejudicial publicity was created and published by, or with the approval of, two federal district judges sitting in different, simultaneously pending cases, one civil, the other criminal. The publicity was unique, and devastating, because it expressed the opinion of the district court itself as to defendant's guilty participation in the alleged price fixing conspiracy, the very issue on trial in the criminal case.

As the criminal trial was nearing its conclusion, Judge Harvey, sitting in the civil action, wrote an opinion on an evidentiary question on remand from the Fourth Circuit containing extended and totally gratuitous discussion linking the criminal case to the civil, and expressing the judge's personal opinion about the defendant's guilt. Judge Harvey's chambers then released the opinion *to the press* (which had been covering the criminal trial daily) without notice to any parties and without even filing it in the Clerk's office. In so doing, the district court violated the most fundamental principles which govern the conduct of lawyers and, *a fortiori,* of judges. There is simply no way to condone such behavior, and respondent attempts none in this Court.

The district judge presiding at the criminal trial, Judge Blair, reviewed Judge Harvey's opinion in advance and approved its issuance despite the inflammatory language. After the article appeared, Judge Blair denied a defense motion to inquire into the circumstances of the release of the opinion to the press and waited some five days before making any inquiry of the jury about their exposure to publicity. But even then the court, rather than probing for the facts, posed a barrage of threatening questions, in effect requiring the jury to admit a contempt of court. The judge also entered a gag order precluding any interrogation or investigation of this point by counsel.

Respondent speculates in retrospect that there was "no possibility that the newspaper article in question influenced the jury's verdict," arguing that Crown was acquitted and that the district court's interrogation was proper. Such speculation does not suffice. It is just as plausible to argue that the jury, having seen the article, concluded that Crown, a favored local Baltimore marketer, had already been held liable once and thus should not be convicted in the criminal proceeding; or that the jury acquitted Crown precisely to avoid an inference that the publicity affected their verdict. The simple point is that no one knows the basis for the jury's verdict on Crown or the considerations that influenced the jury, because the district court foreclosed any such inquiry.

This case is unique among decisions involving trial publicity in that the article which appeared in the *Baltimore Sun* bore the imprimatur of the district court itself on the very issue on trial in the criminal case. The highly prejudicial character of Judge Harvey's opinion and the resulting publicity is incontestable, and there is no dispute as to the facts regarding the conduct of the district judges. The issue was fully documented and briefed initially and on rehearing in the court of appeals, which ignored the matter.

The petition is premised on this Court's power of review over the federal judiciary. The significance of the question presented transcends the specific incident of judicial misconduct and the particular interests of the parties to this proceeding. At issue is nothing less than the integrity of the judicial process.

Respectfully submitted,

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